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SUBJECT: IRAQI ELECTION LAW DEBATE SLOUCHES TOWARDS MESSY
CLOSURE

REF: A. BAGHDAD 2014
[1](#)B. BAGHDAD 1997

Classified By: Political Minister Counselor Gary A. Grappo, for reasons
1.4 b and d.

[1](#)1. (C) Summary: On October 1, Council of Representative members voted to add a first reading of a draft election law to the agenda, a procedural move just short of a formal "first reading." The decision was accompanied by debate and then boisterous dissent by some Sunni Arab COR members from Kirkuk. With Speaker Ayad Sammarraie absent, it is not clear the COR will follow through on this tentative procedural step when the session resumes October 3. While the draft under review features open lists, many of our contacts tell Emboffs that the COR is likely in the end to pass a version of the 2005 election law that will revert to the closed list system. The politics behind the skirmishing over open or closed lists is fierce, with COR members using stalking horses like attacks on the electoral commission and the Kirkuk issue to run out the clock so that a default to closed list will be required. The issue of Kirkuk is also proving a substantial obstacle to reaching consensus on an election law. Kurdish lawmakers insist Kirkuk must participate in the elections, while Arab and Turkomen parliamentarians wish to exclude it. There remains a limited opportunity for the COR on its own to pass the law by mid-October. If we sense they are not headed in the right direction, we intend to engage more forcefully next week with key leaders to underscore the urgency of finalizing the elections law. End Summary.

[1](#)2. (C) On October 1, Council of Representative members voted to add a first reading of a draft election law to the agenda, a procedural move just short of a formal "first reading." This was the first sign that the CoR is finally taking the procedural steps to finalize legislation for the January 2010 elections. The decision to add the agenda item was accompanied by debate and then boisterous dissent from some Sunni Arabs COR members from Kirkuk, led by Omar Jibouri and Mohammed Tamim. The draft proposed for consideration was an amended version of the 2005 election law, with adjustments made for open lists, multiple districts, and an increase of CoR seats from 275 to 311 (to reflect Iraq's increased population). It was agreed that the Legal Committee should review the matter before a formal first reading. The session ended, but was not adjourned -- the CoR may resume work on this agenda item without a quorum on October 3.

WHERE'S THE SPEAKER?

[1](#)3. (C) In spite of this tentative move towards open lists, contacts tell Emboffs that the COR will likely pass a less ambitiously amended version of the 2005 election law that uses the closed list system. The timing for a first reading of this amended law has remained uncertain since the COR returned to session on September 29 because COR Speaker Ayad Sammarraie has been abroad. Although this October 1 session could presage an October 3 first reading, First Deputy Speaker Khalid al-Attayah told Pol M/C September 30 that it

would be politically impossible to take act without Sammarraie "This can't be done without the Speaker; I can't do this on my own and accept blame for any problems." Estimates on how long it would take to push an election law through required readings once consensus on content is achieved range from about ten days to three weeks, depending on how closely the COR follows its own procedural rules.)
A GROWING SENSE OF URGENCY

¶4. (C) Despite the Speaker's absence, many COR members appear to sense the urgent need to quickly adopt an election law. As Attiyah noted to Pol M/C, there are "no provisions for extending the COR's term." Any delay in holding the elections would "undermine the legitimacy of the government." COR members and the PM have begun taking steps to break the current political logjam over the law. Meetings of key political blocs and the COR Presidency occurred on September 30 and October 1, for example. Despite the sense of urgency, the current impasse has the feel of political gamesmanship. PM Chief of Staff Tariq Abdullah told Pol M/C on September 30 that political parties "are playing games" aimed at slowing down the election law process.

DEFAULTING TO THE 2005 LAW -----

¶5. (C) Defaulting to the 2005 law might be attractive to the COR for several reasons. It represents a law that has already served as the basis for the previous national election. The conventional wisdom is that it would be easier to pass a lightly amended version of the 2005 law than to

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pass a new one. The 2005 law also makes no special provision for Kirkuk; lawmakers would have to actively include an amendment to exempt Kirkuk from the upcoming election. Many observers doubt the COR is likely to do so; however, using an amended version of the 2005 law that includes Kirkuk does not solve the political issue of how to deal with new Kurdish voters who have registered in Kirkuk since 2004.

¶6. (C) Many contacts we have spoken to expect the COR to accept a closed list system for the January elections, where voters choose a party or coalition list but do not vote for individual candidates. Publicly, many COR members support open lists, which allow voters to choose individual candidates. But Minister for Human Rights (MOHR) Wijdan Salim told Deputy Pol/C that COR members privately fear an open list for two reasons: losing their seats in an anti-incumbency wave and losing prestige and position in their own parties (since an open list system would show clearly how much real -- as opposed to claimed -- political support each political leader had).

REAR-GUARD ACTION AGAINST OPEN LISTS -----

¶7. (C) The politics behind the skirmishing over open or closed list is fierce. There is tremendous reluctance among Shia COR members to state openly that they favor a closed list system since Grand Ayatollah Sistani expressed publicly (via an emissary) early on that he favored such a system (ref A). Sunni Arab and Shia contacts speculate that most Kurds oppose an open list and are quietly impeding consensus on any version of the law that would call for an open list system. Senior Kurdish KDP COR member Saadi Barzinji told Poloff that the new law would not be open list, insisting that party blocs have agreed that the 2005 election law would only be amended for the change in date and the number of seats. Sunni Arab COR members are divided. Kirkuk-based Mohammed Ali Tamim al-Jibouri from the Iraqi National Dialogue Front told Emboffs he favored open lists but said his bloc leaders and others did not. Supporters of open lists, such as Baha al-Ariji (Sadrism trend) remain hopeful that an open list

system will be adopted. Noting that his spiritual leader Muqtada al-Sadr (with Ayatollah Sistani) favors open lists, Arijji warned darkly to an Embassy technical assistance provider on September 30 that failure in this regard "would be a disaster."

USING IHEC AS A STALKING HORSE

¶8. (C) Some COR members are using attacks on the Independent High Electoral Commission (IHEC) as a veiled means by which to oppose the open list system. The strategy is to use such attacks to run out the clock, forcing the COR at the last minute (which most consider to be around mid- to late-October) to default to the simpler -- and for incumbents -- politically safer closed list system of the 2005 law. Da'wa leader Ali al-Adib and ISCI-Badr COR member Tahsin al-Azzawi insist there are substantive reasons -- a lack of public confidence and a need for greater transparency -- for criticizing IHEC and the calling for its chairman, Faraj al-Hadairy to be questioned by the COR. Some contacts allege that IHEC has countenanced fraud and is a weaker organization than the one that staged elections in 2005.

¶9. (C) Much of the energy for the attacks on IHEC is coming from parties that did poorly in the January 2009 provincial council elections, such as Fadilah and even ISCI. MOHR Salim noted that such attacks potentially afford politicians a scapegoat if they fare poorly in January. Political leaders Qscapegoat if they fare poorly in January. Political leaders such as Adib and Azzawi seem to recognize the potential dangers of attacking IHEC too strongly and make clear they do not intend to remove commissioners or fundamentally undermine the organization. "That would be crazy just before an election," Azzawi told emboff.

KIRKUK: THE MOTHER OF ALL RED HERRINGS

¶10. (C) According to contacts, COR members are also using the issue of Kirkuk to delay passage of an election law, even a lightly amended version of the 2005 law. The Kirkuk issue has become a major stumbling block to passage of an elections law (ref B). International Crisis Group head Joost Hilterman and Deputy SRSG for UNAMI Andrew Gilmour separately told Pol M/C separately that although Kirkuk need not be an issue if the 2005 law is used, Arab and Turkomen lawmakers have made it one. "If it is not satisfactorily addressed, staging credible national elections is doubtful, and it will also be difficult to prevent further violence in Ninewa," noted Hilterman.

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¶11. (C) A core issue is agreeing on whether and how the many Kurds (estimates range between 300,000 and 800,000) who have ostensibly relocated to the province since 2004 should be allowed to vote in the January 2010 election. For Sunni Arab and Turkomen politicians, a concern is that any voter registration list used in Kirkuk in the upcoming election could be used for subsequent provincial elections. (NOTE: Kirkuk did not hold provincial elections in January 2009 and is to hold a make-up election.). In addition, they fear that an updated voter registration list, which would almost certainly show larger numbers of Kurds by comparison with the 2004 voter registration list, could lend weight to Kurdish claims in the context of future final status discussions and/or a referendum on Kirkuk's status.

¶12. (C) For Sunni Arab and Turkomen politicians, there are two possible objectives. The first would be to exempt Kirkuk from participating in the national election to avoid an electoral rout by the Kurds. Excluding Kirkuk's voters is likely unconstitutional and has been flatly rejected by Kurdish politicians. They have threatened to walk out of the COR and not participate in the national government if Kirkuk

is excluded. More sophisticated contacts, such as Deputy Speaker Khalid Attiya (Shi'a) realize that excluding Kirkuk would be a blow to national reconciliation efforts. PM Maliki is of the same view.

¶13. (C) The fallback objective for Sunni Arabs and Turkomen is to block the elections law's passage and delay the elections until at least March 2010. The rationale is that special voting rules could ostensibly be put in place for Kirkuk; the goal would be to eliminate from voter rolls as many of the newly registered Kurdish voters as possible on the pretext that they are not really residents of Kirkuk and hence illegally registered. (NOTE: Some 300,000 newly arrived Kurds are thought to have registered since 2004.). Kirkuk's Deputy Governor Rakan (a Sunni) told the Ambassador's Special Advisor for Northern Issues that the initial version of the 2004 voter rolls (before some amendments allowed large numbers of Kurds to register) offered a workable alternative. Speaker Sammarraie has proposed establishing a special parliamentary committee that would compare new registrations with residency records and food ration cards, a time-consuming process. (NOTE: UNAMI estimates that it would take years, not months, even if it were politically acceptable to the Kurds, which it is not.)

¶14. (C) Most observers recognize that even if the Kurds win overwhelmingly in the January elections they will only gain several "Kurdish" seats at most. One alternative is for the COR or the Presidency Council to declare that the 2009 Kirkuk voter registry is only for the January 2010 COR elections. Another option would be to divide Kirkuk's COR seats according to a negotiated formula. Al-Ariji (Sadrist trend) suggested what he termed a "middle" solution by which the Kurds would get 9 of Kirkuk's 14 COR seats; the rest would go to Sunni Arabs and Turkomen. A number of compensatory seats would be given to other political blocs (seats taken from other governorates where the population has grown less rapidly). There are other various formulas, but the concept seems to be to soften the blow to the Arabs and Turkomen of the significant increase in the proportion of Kurdish seats overall by giving everybody in Kirkuk more seats.

15 (C) COMMENT: UNAMI Deputy SRSG Gilmour is convinced that Speaker Sammarraie will be unable to forge consensus and QSpeaker Sammarraie will be unable to forge consensus and corral the votes necessary to pass an election law, without considerable external support from UNAMI, the USG and others.

We tend to agree, although there remains a limited opportunity for the COR to get the job done on its own. If we sense the COR is not headed in the right direction, we will engage more forcefully next week with key leaders to underscore the urgency of finalizing an election law, whatever its modalities. We can get this done but it may require a final USG push.

HILL